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situated***FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 14 2022

BY Mayela Martinez
MAYELA MARTINEZ, DEPUTY**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**JUAN S. GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

LA PERGOLA TRATTORIA LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

CIV SB 22 20 337
CASE NUMBER:**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

By Fax

INTRODUCTION

1
2 1. This is a class and representative action brought by Juan S. Gonzalez ("Plaintiff"), on
3 behalf of himself and all other similarly situated individuals, against La Pergola Trattoria LLC ("La
4 Pergola") (herein referred to collectively as "Defendant"), in order to hold Defendant accountable for
5 wage theft and other violations of California wage and hour laws. Plaintiff makes the following
6 allegations on information and belief, except as to allegations pertaining to Plaintiff individually,
7 which are based on his respective personal knowledge.

8 2. Defendant operates a private, for-profit Italian restaurant located at 40821 Village
9 Drive, Big Bear Lake, California.

10 3. At all relevant times herein, Defendant has implemented common policies and
11 practices designed to maximize profits at the expense of its non-exempt employees. These policies
12 and practices have resulted in systematic violations of California's wage and hour laws.

13 4. Defendant maximizes profits by cutting labor costs through understaffing, denying
14 meal and rest breaks, cheating its non-exempt employees out of wages and premiums, failing to
15 provide accurate and itemized wage statements, and related violations of California wage and hour
16 laws. For instance, in order to minimize labor costs, Defendant has implemented unlawful policies
17 with respect to meal and rest breaks. Defendant requires its non-exempt employees to work through
18 meal and rest breaks, take their meal periods and breaks at times after the start of the fifth hour from
19 the beginning of their shifts, and/or their meal and rest periods are cut short due to staffing shortages
20 and the needs of Defendant in assisting customers. As a result, Plaintiff and other non-exempt
21 employees have been denied the ability to take the legally-compliant meal and rest breaks that they
22 were and are entitled to take.

23 5. Defendant also willfully turns a blind eye to off-the-clock work that Plaintiff and other
24 non-exempt employees perform as a direct consequence of Defendant's inadequate staffing and
25 imposition of an unreasonable workload. Moreover, Defendant uniformly failed to pay Plaintiff and
26 other aggrieved employees proper overtime wages due the fact that it has willfully turned a blind eye
27 to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence
28 of Defendant's understaffing and imposition of an unreasonable workload. Defendant failed to pay

1 Plaintiff and other aggrieved employees timely wages. Defendant has also failed to pay final wages to
2 Plaintiff and other aggrieved employees who were employed by Defendant. Defendant has failed to
3 maintain required records, including: total daily hours worked by each non-exempt employee;
4 applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt
5 employee begins and ends each workday; and other missing records yet to be discovered. Defendant
6 also failed to provide Plaintiff and other aggrieved employees with accurate itemized wage
7 statements. Finally, Defendant has failed to indemnify Plaintiff and other aggrieved employees for
8 necessary expenditures incurred in discharge of duties.

9 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
10 himself and a Class of all current and former non-exempt employees of Defendant during the
11 applicable limitations period to compensate these workers for the wages Defendant has stolen from
12 the Class members and to protect current and future workers from being subjected to similar unlawful
13 working conditions perpetrated by Defendant.

14 **JURISDICTION AND VENUE**

15 7. The Superior Court of the State of California has jurisdiction in this matter because
16 Plaintiff is a resident of the State of California, and Defendant is licensed to do business under the laws
17 of the State of California. No federal question is at issue because Plaintiff's claims are based solely on
18 California law.

19 8. Venue is proper in this judicial district and the County of San Bernardino because
20 Plaintiff, and all other persons similarly situated, performed work for Defendant in San Bernardino
21 County, Defendant maintains a restaurant located within San Bernardino County, and Defendant's
22 illegal payroll policies and practices, which are the subject of this action were applied, at least in part,
23 to Plaintiff, and other persons similarly situated, in the County of San Bernardino.

24 **THE PARTIES**

25 9. During the statute of limitations period, Plaintiff was employed by Defendant as a cook,
26 a non-exempt position, at the restaurant owned and operated by Defendant in Big Bear Lake, California.

27 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, La Pergola
28 Trattoria, LLC, is and at all times relevant hereto was, a company organized and existing under the

1 laws of the State of California.

2 11. As a direct and proximate result of the unlawful actions of Defendant, and each of
3 them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in
4 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

5 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
6 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
7 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
8 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
9 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
10 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
11 capacities of such DOE defendants when ascertained.

12 13. Plaintiff is informed and believe, and based thereon alleges, that each defendant sued in
13 this action, including each defendant sued by the fictitious names DOES 1 through 50, inclusive, is
14 directly or indirectly responsible in some manner for the occurrences, controversies and damages
15 alleged herein, in various capacities, including but not limited to serving as joint employer, joint
16 tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each defendant approved,
17 participated in, controlled, or ratified the acts of all other defendants.

18 **CLASS ACTION ALLEGATIONS**

19 14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of himself
20 and the following Class:

21 All current and former non-exempt employees of Defendant who performed
22 work for Defendant in the State of California at any time during the relevant
statute of limitations period.

23 15. Plaintiff reserves the right to name additional Class representatives as may be
24 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
25 proposed Class and/or add subclasses before the Court determines whether certification is
26 appropriate.

27 16. This action is appropriately suited for a class action because:
28

1 A. The proposed Class is a significant number. Plaintiff is informed and believes
2 that the proposed Class consists of at least forty (40) current and former non-exempt employees,
3 rendering joinder impractical.

4 B. This action involves common questions of law and fact to the proposed Class
5 because the action focuses on Defendant's systematic course of illegal payroll practices and policies,
6 which was applied to all non-exempt employees in uniform violation of the California Labor Code,
7 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair
8 business practices arising from such violations. Here are a few common questions of law and fact
9 that will drive resolution of this action:

- 10 1. Whether Defendant failed to provide non-exempt employees with
11 legally compliant meal periods and rest breaks, and whether Defendant
12 properly paid premium pay as a result of missed and non-compliant
13 meal periods and rest breaks;
- 14 2. Whether Defendant failed to pay overtime and minimum wages
15 non-exempt employees in compliance with California law;
- 16 3. Whether Defendant failed to maintain required records and accurate
17 wage statements for non-exempt employees;
- 18 4. Whether Defendant paid all wages due at the time of separation to
19 the non-exempt employees; and
- 20 5. Whether Defendant's engaged in unfair and/or unlawful business
21 practices.

22 C. Plaintiff's claims are typical of the proposed Class because Defendant
23 subjected all of its non-exempt employees to the similar and overlapping violations of the California
24 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

25 D. Plaintiff is able to fairly and adequately protect the interests of all members of
26 the proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
27 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has
28 also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION**Failure to Provide Required Meal Periods**

**[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11
And All Other Applicable Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)**

17. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 16 (A-D).

18. During the statute of limitations period, as part of Defendant's unlawful policies and practices to deprive its non-exempt employees of all wages earned and due, Defendant required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable IWC Orders.

19. Defendant has implemented several common policies and practices that have caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods. For example, Defendant has failed to adequately inform Plaintiff and Class members of their rights to take meal periods under California law. Defendant also understaffed its restaurant such that Plaintiff and Class members are given so much work to complete that they regularly miss or take non-compliant meal periods. Plaintiff and Class members are so busy with their assigned duties and responsibilities cooking, preparing food, waiting on customers, etc., which must be completed within their scheduled shifts they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

20. Further, Defendant systemically deprived Plaintiff and Class members of the opportunity to take second meal periods even though they regularly work shifts in excess of ten (10) hours.

21. Despite work conditions that systematically result in missed and non-compliant meal periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of discouraging payment of meal period premium payments. Moreover, Defendant, to the extent any

1 meal period premiums are paid, fail to pay such premiums at the regular rate of pay of the Class
2 members. In short, Defendant has violated California Labor Code §§ 226.7, §§ 10 and 11 of all
3 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
4 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and
5 permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation
6 at the proper regular rate of pay for each workday that such a meal period was not authorized or
7 permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§
8 10 and 11 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members
9 for all hours worked during their meal periods.

10 22. As a proximate result of the aforementioned violations, Plaintiff and Class members
11 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
12 interest, penalties, expenses, and costs of suit.

13 **SECOND CAUSE OF ACTION**

14 **Failure to Provide Required Rest Breaks**

15 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12 And**
16 **All Other Applicable Wage Orders and Applicable Sections]**
17 ***(On Behalf of Plaintiff and the Class against all Defendants)***

18 23. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 22.

20 24. At all times relevant herein, as part of Defendant's illegal policies and practices to
21 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff
22 and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512,
23 and §§ 11-12 of all applicable IWC Wage Orders.

24 25. As with meal periods, Defendant's policies and practices caused Plaintiff and Class
25 members to miss or otherwise take non-compliant rest periods by, among other things, giving them
26 unreasonable mounts of work that had to be completed within their shift such that rest periods simply
27 could not be taken. This was the result of systematic understaffing at each of the restaurants.
28 Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in the
inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendant did

1 not adequately notify Plaintiff and Class members of their rights to take rest periods, and
2 systematically denied them the opportunity to take rest periods.

3 26. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 5-
4 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
5 failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance
6 with the applicable wage order, one additional hour of compensation at the proper regular rate of pay
7 for each workday that a rest break was not provided.

8 27. As a proximate result of the aforementioned violations, Plaintiff and Class members
9 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
10 interest, penalties, expenses, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3**

14 **And All Other Applicable Wages Orders And Sections]**

15 ***(On Behalf of Plaintiff and the Class against all Defendants)***

16 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 27.

18 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
19 orders, Defendant is required to compensate Plaintiff and Class members for all overtime, which is
20 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
22 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
23 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
24 work in any workweek.

25 30. During the statute of limitations period, Defendant failed to compensate Plaintiff and
26 Class members for all overtime hours worked as required under the foregoing provisions of the
27 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at
28 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
510, 1194 and IWC Wage Order No. 5-2001, § 3 and all other applicable wage orders, requiring,

1 permitting or suffering Plaintiff and Class members to work off-the-clock, and to work through meal
2 and rest breaks, but not compensating them for this time, illegally and inaccurately recording time in
3 which Plaintiff and Class members worked, failing to pay the regular overtime rate of pay based upon
4 Plaintiff and Class members earned non-discretionary bonuses, and other methods to be discovered.

5 31. In violation of California law, Defendant has knowingly and willfully refused to
6 perform their obligations to compensate Plaintiff and Class members for all wages earned and all
7 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members
8 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
9 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
10 to fully perform their obligations under state law, all to their respective damages in amounts
11 according to proof at time of trial, and within the jurisdiction of this Court.

12 32. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
13 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§
14 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
15 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
16 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
17 suit.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Pay Minimum Wages**

20 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001,
21 And § 4 And All Other Applicable Wages Orders And Sections]
22 (On Behalf of Plaintiff and the Class against all Defendants)**

23 33. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 32.

25 34. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5-2001
26 and all applicable wage orders and sections, payment to an employee of less than the applicable
27 minimum wage for all hours worked in a payroll period is unlawful.

28 35. During the statute of limitations period, the hourly rates for Plaintiffs and Class
members were at or slightly above minimum wage. Based on this common practice, Defendant failed

1 to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring,
2 permitting or suffering Plaintiffs and Class members to work off-the-clock, such as requiring them to
3 work through meal and rest breaks, but not compensating them for this time as Plaintiff and the Class
4 members were required to write down the time of their work shifts on their time cards which did not
5 accurately reflect their actual hours worked, and failing to include this time in all hours worked,
6 unlawfully rounding their time, failing to pay the accurate rate of pay based upon earned non-
7 discretionary bonus payments and other methods to be discovered.

8 36. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
9 of IWC Wage Order No. 5, and any other applicable IWC Wage Order. As a proximate result of the
10 aforementioned violations, Plaintiff and Class members have been damaged in an amount according
11 to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
12 and any other applicable wage orders and law, Plaintiffs and Class members are entitled to recover
13 the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees,
14 expenses, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay Timely Wages**

17 **[Cal. Lab. Code §§ 204, 210]**

18 ***(On Behalf of Plaintiff and the Class against all Defendants)***

19 37. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 36.

21 38. California Labor Code § 204 provides that all wages earned by any person in any
22 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
23 due upon termination of an employee, are due and payable between the 16th and 26th day of the
24 month during which the labor was performed. California Labor Code § 204 further provides that all
25 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
26 calendar month, other than those wages due upon termination of an employee, are due and payable
27 between the 1st and the 10th day of the following month. California Labor Code § 204 further
28 provides that all wages earned for labor in excess of the normal work period shall be paid no later than
the payday for the next regular payroll period.

39. During the statute of limitations period, Defendant, among other things, willfully failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited to, meal and rest break premiums, overtime and minimum wages, and payment for work performed off-the-clock, within any time period permissible under Labor Code § 204.

40. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201-203]
(On Behalf of Plaintiff and the Class against all Defendants)

41. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 40.

42. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

43. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

44. As a result, Plaintiff and Class members are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

SEVENTH CAUSE OF ACTION**Failure to Maintain Required Records****[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6 And****All Applicable Wage Orders And Sections]*****(On Behalf of Plaintiff and the Class against all Defendants)***

45. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 44.

46. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; accurate itemized wage statements, and other missing records yet to be discovered.

47. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available penalties, including but not limited to, penalties pursuant to California Labor Code §§ 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION**Failure to Furnish Accurate Itemized Wage Statements****[Cal. Lab. Code §§ 226; IWC Wage Order No. 5-2001, § 6 And****All Applicable Wage Orders And Sections]*****(On Behalf of Plaintiff and the Class against all Defendants)***

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

49. During the statute of limitations period, Defendant routinely failed to provide Plaintiff and Class members with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, overtime hours worked and paid, all deductions

1 made, net wages earned, and all applicable and accurate hourly rates in effect during each pay period
2 and the corresponding number of hours worked at each hourly rate, the full legal name and address of
3 the employer on the wage statements; all in violation of California Labor Code § 226 and §§ 6 and 7
4 of the applicable IWC Wage Orders.

5 50. Defendant's pay stubs violate Labor Code § 226 because Defendant routinely and
6 intentionally fail to provide Plaintiff and Class members with proper meal and rest breaks but fail to
7 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
8 for each non-compliant meal or rest break, fail to include all regular and overtime hours worked off
9 the clock by Plaintiff and the other Class members, in addition to failing to provide regular and
10 overtime wages, rendering the wage statements inaccurate; and other violations yet to be discovered.

11 51. Defendant knowingly and intentionally failed to provide Plaintiff and Class members
12 with timely, accurate, and itemized wage statements in accordance with California Labor Code §
13 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were
14 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

15 52. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
16 Class members have been damaged in an amount according to proof at trial, and seek all wages
17 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
18 available penalties, including but not limited to penalties pursuant to California Labor Code §§
19 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including
20 but not limited to those provided in California Labor Code § 226(e), as well as other available
21 remedies.

22 **NINTH CAUSE OF ACTION**

23 **Failure to Indemnify Employees for Necessary Expenditures**

24 **[Cal. Lab. Code § 2802]**

25 ***(On Behalf of Plaintiff and the Class Against all Defendants)***

26 53. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 52.

28 54. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all

1 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
2 his or her duties, or of his or her obedience to the directions of the employer.

3 55. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendant
4 failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in
5 direct consequence of the discharge of their duties, including but not limited to, expenses for their
6 uniforms and uniform maintenance. Plaintiff and Class members were required to use their personal
7 cellular phones for work related purposes and purchase their own personal protective equipment
8 ("PPE's) and other safety equipment when mask were required to be worn indoors during the
9 COVID-19 pandemic, but Defendant did not reimburse them for these expenses.

10 56. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
11 Class members have been damaged in an amount according to proof at trial, and seek reimbursement
12 of all necessary expenditures, plus interest thereon pursuant to Cal. Lab. Code §2802(b).
13 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an
14 award of costs, expenses, and reasonable attorneys' fees, including those provided in Cal. Lab. Code
15 § 2802(c), as well as other available remedies.

16 **TENTH CAUSE OF ACTION**
17 **Unfair and Unlawful Business Practices**
18 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**
19 ***(On Behalf of Plaintiff and the Class against all Defendants)***

20 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in paragraphs 1 through 56.

22 58. Each and every one of Defendant's acts and omissions in violation of the California
23 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,
24 Defendant's failure to provide required meal and rest breaks, unlawful rounding and requiring off-
25 the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely
26 wages, failure pay the accurate rate of pay, and failure to furnish accurate itemized wage statements
27 or to maintain required records, constitute an unfair and unlawful business practice under California
28 Business and Professions Code § 17200 *et seq.*

1 59. Defendant's violations of California wage and hour laws constitute a business practice
2 because the aforementioned acts and omissions were done repeatedly over a significant period of
3 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

4 60. Defendant has avoided payment of wages, the provision of meal and rest breaks, and
5 other benefits as required by the California Labor Code, the California Code of Regulations, and the
6 applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct
7 sums of assessment to the state authorities under the California Labor Code and other applicable
8 regulations.

9 61. As a result of these unfair and unlawful business practices, Defendant has reaped
10 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and
11 members of the public. Defendant should be made to disgorge their ill-gotten gains and to restore
12 them to Plaintiff and Class members.

13 62. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members
14 to seek preliminary and permanent injunctive relief, including but not limited to orders that
15 Defendant accounts for, disgorge, and restore to Plaintiff and Class members the wages and other
16 compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution
17 of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

18 **ELEVENTH CAUSE OF ACTION**
19 **Representative Action for Civil Penalties**
20 **[Cal. Lab. Code §§ 2698- 2699.5]**

21 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

22 63. Plaintiff incorporates herein by specific reference as though fully set forth the
23 allegations in paragraphs 1 through 62, with exception of the allegations in Paragraphs 14 through 16
(A-D).

24 62. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
25 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-
26 exempt employees of Defendant who are California citizens, pursuant to the procedures specified in
27 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
28 violations of the California Labor Code were committed against Plaintiff.

1 63. A plaintiff has standing to represent all aggrieved employees for all of his asserted
2 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
3 (2018) 23 Cal.App.5th 745, 757.

4 64. Plaintiff seeks to recover civil penalties through a representative action permitted by
5 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
6 certification is not required.

7 65. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
8 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties
9 under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, and all
10 applicable IWC wage order penalties, from Defendant in a representative action for the violations set
11 forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226,
12 226.7, 246, 248, 248.1, 248.2, 351, 510, 512, 1174, 1194, 1197, 1198 and 1774. Plaintiff is also entitled
13 to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

14 66. Pursuant to California Labor Code §§ 2699.3, on June 3, 2022, Plaintiff gave written
15 notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and
16 Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to
17 have been violated, including the facts and theories to support the alleged violations. Within sixty-
18 five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice
19 to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with
20 all of the requirements set forth in California Labor Code § 2699.3 to commence a representative
21 action under PAGA.

22 67. California Labor Code § 2699(f) provides that for all California Labor Code violations
23 for which a civil penalty is not specifically provided, the following civil penalties are established: one
24 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
25 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

26 68. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
27 for Defendant violations of California Labor Code provisions for which a civil penalty is not
28 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,

1 226.7, 246, 248.1, 248.2, 1197, 1024.5, and for the violations of the applicable IWC Wage Order
2 alleged above.

3 69. All civil penalties sought and recovered under this action will be allocated as follows:
4 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
5 aggrieved employees.

6 70. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
7 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly situated,
10 respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them,
11 as follows:

12 1. For compensatory damages in an amount to be ascertained at trial;

13 2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged
14 profits from the unfair and unlawful business practices of Defendant;

15 3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and
16 IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;

17 4. For liquidated damages pursuant to California Labor Code § 1194.2;

18 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
19 the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging
20 in the unlawful business practices complained of herein;

21 6. For civil penalties under California Labor Code § 2699(f);

22 7. For waiting time penalties pursuant to California Labor Code § 203;

23 8. For statutory penalties according to proof, including but not limited to, all penalties
24 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 1174.5, 1775, 1197.1 and
25 2699;

26 9. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
27 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

1 10. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor
2 Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable
3 provision providing for pre-judgment interest;

4 11. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
5 226, 1194, 2802, 2699 and California Code of Civil Procedure § 1021.5, California Civil Code §
6 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing
7 for attorneys' fees and costs;

8 12. For declaratory relief;

9 13. For an order requiring and certifying the First through Tenth Causes of Action as a
10 class action;

11 14. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
12 Class counsel; and

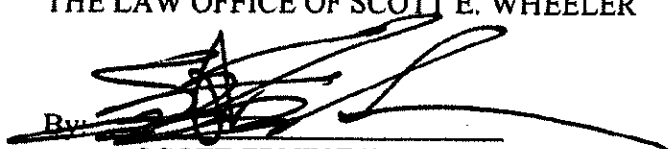
13 15. For such further relief that the Court may deem just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
16 with respect to all issues triable of right by jury.

17 DATED: September 12, 2022

THE LAW OFFICE OF SCOTT E. WHEELER

18
19 By: 
20

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

21 *Attorney for Plaintiff and all others similarly situated*
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